

**ENTERED**

January 17, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

KENNETH STEWART,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

§  
§  
§  
§  
§  
§  
§  
§

CIVIL NO. 2:16-CV-00514

**ORDER**

The Court now considers Petitioner Kenneth Stewart's ("Stewart") Petition for Writ of Habeas Corpus, Dkt. No. 1; Respondent Lorie Davis's ("Davis") Motion to Dismiss, Dkt. No. 8; and Stewart's Application to Proceed *In Forma Pauperis*, Dkt. No. 14.

On November 29, 2016, Stewart filed his petition for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2254, challenging his July 9, 2012, conviction for aggravated sexual assault of a child, sexual assault of a child, and indecency with a child. Dkt. No. 1. On February 22, 2017, Davis filed her motion to dismiss, arguing that Stewart's petition is time-barred. Dkt. No. 8. On June 7, 2017, the Magistrate Judge to whom this case was referred issued her Memorandum and Recommendation ("M&R") pursuant to 28 U.S.C. § 636(b). Dkt. No. 12. On November 13, 2017, Stewart filed a notice of appeal to the U.S. Court of Appeals for the Fifth Circuit. Dkt. No. 13. On the same day, Stewart filed an application to proceed *in forma pauperis*. Dkt. No. 14. On November 20, 2017, the Magistrate Judge issued an M&R with respect to Stewart's application. Dkt. No. 16.

The Court has before it Stewart's petition for writ of habeas corpus, Dkt. No. 1; Davis's motion to dismiss, Dkt. No. 8; Stewart's application to proceed *in forma pauperis*, Dkt. No. 14; and the two M&Rs, Dkt. Nos. 12, 16. The deadline to file objections to the Magistrate Judge's proposed conclusions of law and recommendations has passed, and the docket sheet shows that no objections have

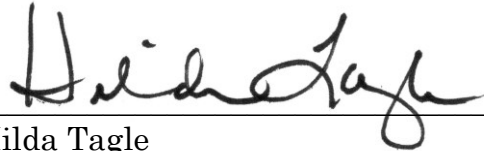


been filed. *See* U.S.C. § 636(b)(1) (setting a 14-day deadline to file objections); FED. R. CIV. P. 72(b)(2) (same); *see also* Dkt. Nos. 12 at 13–14, 16 at 2 (advising parties of the 14-day deadline).

After independently reviewing the record and considering the applicable law, this Court adopts the Magistrate Judge’s proposed conclusions and recommendations. The Court hereby **GRANTS** Davis’s motion to dismiss. Dkt. No. 8. Accordingly, the Court **DISMISSES WITH PREJUDICE** Stewart’s habeas petition as time-barred, Dkt. No. 1. The Court further **DENIES** Stewart a certificate of appealability. For this reason, the Court also **DENIES** Stewart’s application to proceed *in forma pauperis*. Dkt. No. 14.

The Court will enter final judgment separately in accordance with Federal Rule of Civil Procedure 58.

SIGNED this 17th day of January, 2018.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', is written over a horizontal line.

Hilda Tagle  
Senior United States District Judge